SIKKIM

GOVERNMENT GAZETTE

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GOVERNMENT OF SIKKIM
ELECTION DEPARTMENT

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Notification No.82/SKM-LA/(12004/2004 22nd January,2007 of the Election Commission of India, New Delhi is hereby republished for general information.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road,
New Delhi-110001

Dated: 22nd January,2007
2 Magha,1928(Saka))

NOTIFICATION

No. 82/SKM-LA/(1/2004/2004:- In pursuance of Section 116C(2) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission, hereby, publishes the judgment/order dated the 15th December,2006 of the Supreme Court of India in the Civil Appeal Nos. 8250,8253 and 8255 of 2004 arising out of Election Petition Nos.1,2 & 3 of 2004.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8250 OF 2004

YOUARAJ RAI ..... APPELLANT

VERSUS

CHANDER BAHADUR KARKI .....RESPONDENTS

WITH

CIVIL APPEAL Nos. 8253 AND 8255 OF 2004

JUDGEMENT

C.K.THAKKER, J.

Appeals admitted,

All the above three appeals raise an interesting and important question of law as to interpretation of Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as " the Act").

In all these appeals, facts are more or less similar. The Election Commission of India issued a notification on March 16, 2004 for holding general election to the Legislative Assembly for the State of Sikkim. Total constituencies were 32. A programme was published which provided various stages of election. April 23, 2004 was the last date for filing nomination papers, April 24, 2004 was fixed for scrutiny of nomination papers, April 26, 2004 was the last date for withdrawal of candidatures, May 10, 2004 was the date of poll, if necessary, and date of counting and declaration of results was fixed as May 17, 2004. The appellants filled in their nomination papers from 12 Wak Assembly Constituency, 14 Melli Assembly Constituency and 13 Damthang Assembly Constituency respectively on April 23, 2004. When nomination papers were scrutinized on the next date, i.e. April 24, 2004, they were found to be defective and hence all their nomination papers were rejected. The resultant effect was that on April 26, 2004 which was the last date for withdrawal of candidature, in all the three above constituencies, only one candidate was in the field. The Returning Officer, therefore, declared the first respondent in all the matters elected (un-contested). In respect of other constituencies, however, polling was held on May 10, 2004 and after counting of votes, results were declared on May 17, 2004.

All the three appellants filed Election Petitions in the High Court of Sikkim (Election Tribunal) on June 25, 2004. Notices were issued to the respondents returned candidates and they appeared. A preliminary objection was raised by the returned candidates as to maintainability of petitions on the ground of limitation. It was contended that in accordance with the provisions of Section 81 of the Act, an election petition could be presented calling in question any election of a successful candidate within a period of forty-five days from the date of election of the returned candidate. Since the returned candidates were declared elected (un-contested) on April 26, 2004, election petitions could be filed only within a period of forty-five days from that date, i.e. April 26, 2004. Petitions were admittedly filed on June 25, 2004 and thus they are barred by limitation. The case of the election-petitioners, on the other hand, was that date of poll was May 10, 2004 and date of publication of results of election under Section 73of the Act was May 17, 2004. For all material purposes, therefore, relevant date was May 17, 2004 and not April 26, 2004 and in view of that fact, election petitions were within limitation.

Considering the controversy between the parties and a preliminary objection regarding maintainability of petitions on the ground of limitation, the High Court raised a preliminary issue as under-

"Whether the election petition is barred by the law of limitation as prescribed under Section 81 of the Act?"

The High Court then heard the learned counsel for the parties, considered the relevant provisions of the Act and other laws, referred to the decisions cited at the Bar and held that the relevant date of commencement of limitation for the purpose of challenging the election of returned candidates (uncontested) was April 26, 2004 and not May 17, 2004 as contended by the election petitioners, Election petitions were, therefore, barred by limitation. The High Court, accordingly, dismissed all the petitions with costs.

Being aggrieved by the order passed by the High Court, all the appellants have filed these appeals under Section 116A of the Act. Notice was issued on January 6, 2005. The appeals were also ordered to be posted for hearing.

We have heard learned counsel for the parties.

The learned counsel for the appellants submitted that the High Court has committed an error of law in dismissing election petitions filed by the appellant's election petitioners on the ground of limitation. He submitted that reading of the relevant provisions of the Act makes it abundantly clear that extended period of limitation is provided in Section 81 of the Act and petitions filed by the appellants-petitioners were within the period of limitation. It was also submitted that the present cases are governed by the second part of Section 81 of the Act and not the first part of the said provision and High Court erroneously held that the period of limitation would start from declaration of returned candidate on April 26, 2004. The counsel alternatively argued that even if two interpretations are possible, the one which would enable the Election Tribunal (High Court) to consider and decide the case on merits would be preferred to another interpretation which would non-suit the election petitioners holding the petitions to be barred by time. It was, therefore, submitted that the order passed by the High Court deserves to be set aside by allowing these appeals and remitting all petitions to the High Court, to treat them within time and to decide them in accordance with law.

The learned counsel for the respondents returned candidates, on the other hand, supported the order passed by the High Court . He submitted that the High Court was wholly justified in dismissing the petitions and in interpreting the relevant provisions of the Act and in particular, Section 81 thereof. According to him, the relevant date for filing an election petition would be the date of declaration of returned candidate and once such declaration was made on April 26, 2004, the limitation began to run from that date and the defeated candidates were required to institute election petitions within forty-five days from that date. Admittedly, petitions were filed on June 25, 2004 and hence, they were rightly held barred by limitation. It was also submitted that considering the relevant provisions of law, the amendments made in the Act in 1956 and 1961, the reasoning and conclusion of the High Court cannot be faulted with and the appeals deserve to be dismissed.

Our attention has been invited by the learned counsel for the parties to the relevant provisions of the Act as also of other laws. Before we deal with the respective contentions of the learned counsel for the parties, it would be appropriate if we refer to the relevant provisions of the Act. The Preamble of the Act declares that the Act has been enacted "to provide for the conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State; the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections". Section 2 is a 'legislative dictionary' and defines various terms. It, however, starts with a caveat and declared that the definition in the said section would prevail "unless the context otherwise requires". Clause (d) of sub-section (1) of Section 2 defines 'election' as " election to fill a seat or seats in either House of Parliament or in the House or either House of the Legislature of a State". Sub-section (2) of Section 2 enacts that for the purposes of the Act, "a Parliamentary constituency, an Assembly Constituency, a Council constituency, a local authorities' constituency, a graduates' constituency and a teachers' constituency shall be treated as a constituency of a different class". Part II deals with qualifications and disqualifications of membership of Parliament and of State Legislatures, Part III provides for issuance of notification for general elections. Section 15 deals with notification for general election to a State Legislative Assembly. Part V relates to conduct of elections.

Chapter III thereof titled 'General procedure at elections' relates to cases where there is contest as also non-contest. Section 53 which is relevant reads thus-

53. Procedure in contested and uncontested elections.- (1) If the number of contesting candidates is more than the number of seats to be filled, a poll shall be taken.

(2) If the number of such candidates is equal to the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be duly elected to fill those seats.

(3) If the number of such candidates is less than the number of seats to be filled, the returning officer shall forthwith declare all such candidates to be elected and the Election Commission shall by notification in the Official Gazette call upon the constituency or the elected members or the members of the State Legislative Assembly or the members of the electoral college concerned, as the case may be, to elect a person or persons to fill the remaining seat or seats.

Provided that where the constituency or the elected members or the members of the State Legislative Assembly or members of the electoral college having already been called upon under this sub-section, has or have failed to elect a person or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Election Commission shall not be bound to call again upon the constituency, or such members to elect a person or persons until it is satisfied that if called upon again, there will be no such failure on the part of the constituency of such members.

Sections 54 and 63 which provided procedure at elections in constituencies which included reserved seats and method of voting at such elections were subsequently repealed. We will deal with that aspect at an appropriate stage.

Chapter IV of the said part relates to poll. Chapter V deals with 'Counting of votes'. Section 64 states that at every election where a poll is taken, votes shall be counted by or under the supervision and direction of, the Returning Officer, and each contesting candidate, his election agent and his counting agents, shall have a right to remain present at the time of counting. Section 66 enacts that when the counting of the votes has been completed, the Returning Officer shall, in the absence of any direction by the Election Commission to the contrary, forthwith declare the result of the election in the manner provided by the Act or the Rules made under the Act. Section 67 requires the Returning Officer to report the result to the appropriate authority and the Election Commission and the appropriate authority would cause to be published in the Official Gazette the declaration containing the names of the elected candidates.

Section 67A is also material and reads as under-

67A. Date of election of candidate.- For the purpose of this Act, the date on which candidate is declared by the returning officer under the provisions of section 53, or section 66, to be elected to a House of Parliament or of the Legislature of a State shall be the date of election of that candidate.

Section 73 of the Act enjoins upon the Election Commission to issue notification after declaration of result of elections in all constituencies upon which the House is deemed to have been duly constituted. Part VI relates to "Disputes regarding elections". Section 80 prohibits questioning of election except by way of election petition. Under Section 80A, it is the High Court which can try the election petitions. Section 81 provides for presentation of the election petition and prescribes the period of limitation.

Sub-section (1) thereof is material which this Court is called upon to interpret and may be quoted ***in extenso.***

81. Presentation of petitions.- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

The learned counsel for the appellants concedes that Section 81 of the Act prescribes period of limitation and also mandates that an election petition calling in question any election either by a candidate or by any elector should be filed within a period of forty-five days from the date of election of returned candidate. The counsel also concedes that in all the three cases, the returned candidates were declared elected (un-contested) on April 26, 2004 and considering the said date, election petitions filed on June 25, 2004 were barred by limitation. But the argument of the learned counsel is that where there are more than one returned candidate at the election and the dates of their election are different, Section 81 also gives option to a candidate or an elector to present such petition within forty-days from the last date on which one of the candidates has been declared elected. According to the counsel, admittedly the notification for general election to the Legislative Assembly for the State of Sikkim issued by the Election Commission expressly stated that there were 32 constituencies for the Legislative Assembly for the State of Sikkim and election was to be held for all those constituencies. The counsel stated that except in three constituencies wherein the candidates were declared elected (un-contested), in rest of the constituencies, election were held and voting was completed only on May 10, 2004. Results in those constituencies were declared on May 17, 2004. Election Petitions under the second part of Section 81, therefore, could be filed within forty-five days from May 17, 2004. Considering that date, election petitions were within the period of limitation.

It was also submitted that the limitation cannot run prior to the date of declaration of result of elections under Section 73 of the Act inasmuch as the election process could not be said to have come to a final halt until a declaration as required therein is made so as to attract the bar contained in Article 329(b) of the Constitution.

We have already reproduced Section 81 of the Act. It lays down the period of limitation for filing an election petition. Admittedly, it is in two parts. The first part provides that an election petition calling in question any election could be filed by a candidate or an elector within forty-five days 'from the date of the election of the returned candidate'. The second part of the section covers those cases where there are more than one returned candidate at the election and the dates of their elections are different. In such cases, the later of the two dates would be the starting point of limitation for the purpose of filing an election petition.

The learned counsel for the returned candidates submitted, and in our opinion rightly, that the second part of Section 81 does not deal with election to Legislative Assembly or to the House of People (***Lok Sabha***), but to Legislative Council of State or to Council of States(***Rajya Sabha***). That part speaks of more than one returned candidate at the election which is an eventuality only in the election of Legislative Council of State or Council of States where at a single election by the same electorate more than one candidate could be elected.

In this connection, the learned counsel for the respondents drew our attention to Articles 80 and 171 of the Constitution. Whereas Article 80 deals with composition of Council of States, Article

171 relates to Legislative Council of States. Clause(4) of Article 171 enacts that the members to Legislative Councils of States would be elected in accordance with the system of proportional representation by means of single transferable vote. Part VII of the Conduct of Election Rules, 1961(hereinafter referred to as 'the Rules') also deals with the manner of counting of votes at such election. Rules 76 to 81 clearly provide that as soon as a candidate secures the required quota of votes, he will be declared elected and surplus votes will be transferred in favour of remaining candidates as indicated in the ballot papers as being next in order of preference by the elector. By such process, the required number of candidates to be elected will be declared one by one. Thus for instance, if five candidates are to be elected in an election to the Council of States(**Rajya Sabha**) from a particular Legislative Assembly of a State, the dates on which they would be elected might be different because of the time required to count the preference of votes exercised by electors. No such situation, however, will arise in case of election to a Legislative Assembly of a State or House of the People.

The learned counsel also referred to the relevant provisions of the Act as they originally stood in 1951 and the amended provisions after the Representation of the People(Second Amendment) Act, 1956 (Act 27 of 1956)and the Representation of the People(Amendment) Act 1961 (Act 14 of 1961). Section 81 of the Act as it originally stood prior to the Amendment Act, 1956 did not expressly provide period of limitation for filing an election petition. It, however, provided that an election petition calling in question any election could be presented 'in such form and within such time as may be prescribed'. The word 'prescribed' was defined as 'prescribed by the rules made under the Act'. Parliament, however, thought it fit to prescribe the period of limitation. By the Amendment Act, 1956, therefore, it amended Section 81 by expressly providing the period of limitation of forty five days from the date of election of the 'returned candidate'. To avoid any doubt and to make the position explicitly clear as to what should be the date on which a candidate can be said to have been declared elected, Parliament also inserted Section 67A clarifying that the date on which the candidate is declared elected by the Returning Officer would be the date of election of that candidate.

It is also necessary to bear in mind that Section 53 of the Act provides that if the number of candidates is equal to number of seats to be filled, the Returning Officer is required to forthwith declare such candidates to be duly elected and only in the event of contest, poll would be held. Section 66 covers those cases where poll is felt necessary and requires the Returning Officer to declare the result of the election forthwith after counting of votes.

The counsel also submitted that Section 54 of the Act, as originally enacted, dealt with elections in constituencies where more than one candidate was to be elected. Section 63 laid down method of voting at such election, i.e. voting in 'plural member constituencies'. Section 8(2) of the Delimitation Act, 1952 expressly enacted that 'all constituencies shall be either single member constituencies or two member constituencies'. It further stated that 'in every two-member constituency, one seat shall be reserved either for the Scheduled Castes or for the Scheduled Tribes and the other seat shall not be so reserved'. It is in the light of those provisions that the provision for limitation contemplated two types of cases. In a two member constituency, the dates on which candidates were declared elected might be different. Such a case came up for consideration before the Constitution Bench of this Court in V.V. Giri v. D. Suri Dora & Others, (1960) 1 SCR 425:AIR 1959 SC 138. It relarted to Parvatipuram Lok Sabha constituency in Andhra Pradesh which was a two member constituency in which one seat was reserved for Scheduled Caste candidate and other was kept non-reserved/general. At such election, if there is only one candidate for the reserved seat (Scheduled Caste), obviously he would be declared elected as against such reserved seat as soon as the date of scrutiny is over and on the date of withdrawal, there is not more than one candidate. But for the other seat, i.e. non reserved/ general seat, if there are more than one candidate after the date of withdrawal, poll will be held and

result will be declared only after counting of votes. In such cases, the later part of Section 81 of the Act would apply and the benefit of extended period of limitation can be claimed by the election petitioner.

Section 54 of the Act was, however, deleted by the Amendment Act, 1961. Consequently, Section 63 also was deleted by the same Amendment Act. Likewise, the Delimitation Act, 1972 provided readjustment of the allocation of seats in the House of People and Legislative Assembly in each State. Section 9(1) of the said Act required the Delimitation Commission to distribute seats in the House of People **(Lok Sabha)** allocated to each State and seats assigned to Legislative Assembly of each State to 'single member territorial constituencies' and delimit them on the basis of latest census figures having regard to the provisions of the Constitution. It also provided for reservation of seats for Scheduled Castes and Scheduled Tribes. We no longer have multi-member constituencies.

It may also be appropriate to refer to sub-section(3) of Section 4 sub-section(2) of Section 7 of the Representation of the People Act,1950 as amended in 1975 and 1980. Sub-section(3) of Section 4 states that every Parliamentary Constituency shall be a single member constituency. Likewise sub-section(2) of Section 7 declares that 'every Assembly Constituency shall be a single member constituency'.

In view of the above provisions, in our considered opinion, the second part of Section 81 cannot apply to any election to a Legislative Assembly, but it would apply to Legislative Council of a State or Council of States. The High Court was, therefore, right in holding that the relevant date for calculation of the period of limitation was 'the date of election of the returned candidate' and an election petition ought to be filed within forty-five days from such date.

It was urged that the expression "election" has been defined in the Act as an election to fill a seat or seats in either House of the Legislature of a Sate and when the said expression is used in Section 81, it would have the same meaning and it would include election to all constituencies in the State.

We are unable to uphold the argument. It is true that the term "election" in Section 2(d) defines as election to fill a seat or seats in either House of Parliament or either House of the Legislature of a State. But it must be remembered that the Act deals with election of both the Houses of Parliament and State Legislatures and defines the expression "election". Moreover the opening words of Section 2 are " unless the context otherwise requires". Hence while construing, interpreting and applying the definition clause, the Court has to keep in view the legislative mandate and intent and to consider whether the context requires otherwise. As already observed earlier, Section 81 which is in two parts deals with different situations. The first part applies to a Legislative Assembly while the second part applies to a Legislative Council.

The learned counsel for the respondent rightly relied on the following observations of the High Court of Kerala in P.R. Francis v A.V. Aryian,AIR 1968 Ker 252;

Under Section 81 of the Act, 'an election petition calling in question any election may be presented .....by any candidate at such election or any elector' and Section 80 prohibits an election being called in question except by an election petition presented in accordance with Section 81. ***'Election' in this context means not the general election or the entirety of the elections held in the State, but one election held in one Constituency.*** A challenge to the entirety of elections held in the State is therefore within the taboo of Section 80 of the Act. (emphasis supplied)

Upholding of submission that the limitation for filing an election petition should be reckoned not with reference to the date on which the candidate whose election is challenged was declared elected, but with reference to the date on which the last candidate was declared elected at a general election would not only make the provision cumbersome and contrary to the provisions of the Act, particularly against the scheme of amendments introduced in 1956 and 1961 but would also make the starting point of limitation uncertain, indefinite and fluctuating. Such construction would require complete details of all returned candidates of Legislative Assembly of a State. Moreover, where the challenge is to an election of a Member of House of People ***(Lok Sabha),*** full particulars in different constituencies throughout the country must be before the Election Tribunal (High Court). The Tribunal also is bound to inquire into such particulars with a view to ascertaining whether the election petition filed by the petitioner is or is not within the period specified in Section 81 of the Act. Again, in case of dispute or contest on the issue of limitation, the Election Tribunal is required to call for and inspect records of all constituencies. Unless compelled, a court of law would not interpret a provision in such a way which would frustrate legislative intent and make the provision unworkable and impracticable. Finally, the interpretation sought to be suggested by the respondents is otherwise reasonable, jut and equitable inasmuch as it has nexus with the 'cause of action'. When a defeated candidate or an elector has grievance against an act of declaring a particular candidate successful at the election, his cause of action arises as soon as such declaration is made. He, therefore, can challenge that act. He is not concerned with other constituencies or candidates. He cannot be allowed to join his cause of action with declaration of results in other constituencies or returned candidates in those constituencies. (Shri Chandrakant Shukla v. Maharaja Martand Singh, (1973) 3 SCC 194 :AIR 1973 SC 584).

Thus, taking any view of the matter, we find no infirmity in the order passed by the High Court which calls for interference by this Court.

For the foregoing reasons, all the appeals deserve to be dismissed and are hereby dismissed with costs.

In view of dismissal of appeals, we express no opinion on an application seeking substitution in Civil Appeal No. 8253 of 2004.

.....C.JI
Y.K. SABHARWAL
.....J
C.K.THAKKER
.....J

NEW DELHI,
DECEMBER 15,2006

R.V. RAVEENDRAN

By Order

K.Jaya Kumar
Secretary to the Election Commission of India

D.L. Topden
Addl. Chief Electoral Officer, Sikkim.

S.G.P.G. - 65 / Gazette/ 150 Cps./ 19. 03. 2007